



# Tyngsborough Board of Health

Town Hall

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## TOWN OF TYNGSBOROUGH REGULATION PROHIBITING SMOKING IN WORKPLACES and PUBLIC PLACES

### SECTION 1 - PURPOSE

The purpose of this regulation is to protect the health of the employees and general public in the Town of Tyngsborough (Tyngsborough).

### SECTION 2 - AUTHORITY

This regulation is promulgated under the authority granted to the Tyngsborough Board of Health (Board) pursuant to M.G.L. c. 111, § 31, that "[B]oards of health may make reasonable health regulations" and is also promulgated pursuant to M.G.L. c. 270, § 22(j), which states in part that "[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth."

### SECTION 3 - DEFINITIONS

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

- a) Board: The Tyngsborough Board of Health
- a) Compensation: Money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.
- b) E-Cigarette: Any electronic device, not approved by the United States Food and Drug Administration, composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether or not they are manufactured as e-cigarettes, e-cigars, e-pipes, e-hookah, or under any other product name.
- d) Employee: An individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimus* amount of time.
- e) Employer: An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal

entity, whether public, quasi-public, private, or non-profit, which uses the services of one or more employees at one or more workplaces, at any one time, including Tyngsborough.

- f) Enclosed: A space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one or more doors, including but not limited to an office, function room, or hallway.
- g) M.G.L. c. \_\_\_\_\_, § \_\_\_\_: Massachusetts General Laws Chapter \_\_\_\_\_, Section \_\_\_\_\_
- h) Municipal Building: Any building or facility owned, operated, leased, or occupied by the municipality.
- i) Outdoor space: An outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.
- j) Retail tobacco store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Board.
- k) Smoking (or smoke): The lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.
- l) Smoking bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by M.G.L. c. 270, § 22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue (DOR). "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".
- m) Tyngsborough: Town of Tyngsborough
- n) Workplace: An indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for an employer; other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Terms not defined shall be defined as set forth in M.G.L. c. 270, §22, and/or 105 CMR 661. To the extent any of the definitions in this regulation conflict with M.G.L. c. 270, §22, or 105 CMR 661, the definition contained in this regulation shall control.

#### **SECTION 4: SMOKING PROHIBITED**

Smoking shall be prohibited in the workplace as follows:

- a) The employer shall be responsible to provide a smoke-free environment for all employees working in an enclosed workplace as well as those workplaces listed in subsection (c) below.
- a) Smoking is prohibited in Tyngsborough in accordance with M.G.L. c. 270, § 22 (commonly known as the “Smoke-Free Workplace Law”).
- b) Pursuant to M.G.L. c. 270, § 22(j,) smoking is also prohibited in:
  - 1. Smoking bars;
  - 2. Retail tobacco stores;
  - 3. Tyngsborough-owned parks, playgrounds, athletic fields and beaches;
  - 4. The area within 25 feet of any municipal building entranceway accessible to the public, except that this shall not apply to a smoker transiting through such 25 foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product;
  - 5. Nursing homes;
  - 6. Hotels, motels, B&B rooms;
  - 7. All outdoor areas where food and/or beverages are served to the public by employees of restaurants, bars and taverns; and
  - 8. Public transportation and bus and taxi waiting areas within Tyngsborough.
- c) The use of e-cigarettes is prohibited wherever smoking is prohibited pursuant to M.G.L.c. 270, §§ 22 and 4(c), of this regulation.

#### **SECTION 5: ENFORCEMENT**

An owner, manager, or other person in control of a building, vehicle, or vessel who violates this regulation shall be punished as follows:

- a) A fine of \$100 for the first violation;
- b) A fine of \$200 for a second violation occurring within two years of the date of the first violation;
- c) A fine of \$300 for a third and subsequent violation occurring within two years of the second violation.
- d) Each calendar day on which a violation occurs shall be considered a separate offense.
- e) This regulation shall be enforced by the Board and its designee.

- f) Violations of Section 4(b) shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in M.G.L. c. 40, § 21D, without an enabling by-law per M.G.L. c. 270, § 22(m). The disposition of fines assessed shall be subject to M.G.L. c. 111, § 188.
- g) Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in M.G.L. c. 40, § 21D.
- h) If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board may revoke or suspend any Board -issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.
- i) Any person may register a complaint to initiate an investigation and enforcement with the Board.

#### **SECTION 6: SEVERABILITY**


If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

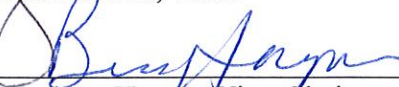
#### **SECTION 7: CONFLICT WITH OTHER LAWS OR REGULATIONS**

Notwithstanding the provisions of Section 4 of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.

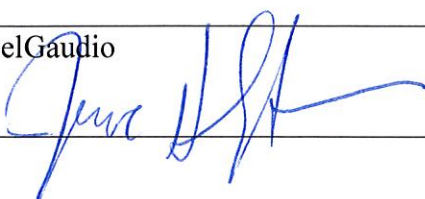
#### **SECTION 8: EFFECTIVE DATE**

This regulation shall be effective as of January 11, 2016.

  
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Sheila Perrault, Chair

  
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Bernadette Harper, Vice-Chair

  
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Steve Berthiaume

Joe DelGaudio  
  
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